

HONORARY CHAIRMAN
Yuri Orlov

EXECUTIVE DIRECTOR
Aaron Rhodes

DEPUTY EXECUTIVE DIRECTOR
Brigitte Dufour

ADVISORY BOARD (CHAIR)
Karl von Schwarzenberg

EXECUTIVE COMMITTEE
Holly Cartner
Bjørn Engesland
Krassimir Kanev
Vasilika Hysi
Ferenc Köszeg

PRESIDENT
Ulrich Fischer

VICE PRESIDENT
Srdjan Dizdarevic

TREASURER
Stein-Ivar Aarsæther

Wickenburggasse 14/7, A-1080 Vienna, Austria; Tel +43-1-408 88 22; Fax 408 88 22-50
e-mail: office@ihf-hr.org – internet: <http://www.ihf-hr.org>
Bank account: Creditanstalt-Bankverein 0221-00283/00, BLZ 11 000

Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

Finland¹

IHF FOCUS: freedom of expression, free media and information; independence of the judiciary and right to a fair trial; prison conditions; conscientious objection; respect of private and family life; equal rights of women and men; racism, intolerance and xenophobia; asylum seekers; trafficking in human beings.

A number of trials throughout 2004 indicated that Finland had difficulties meeting some basic features of international standards for a fair trial, especially with regard to the length of trials. Moreover, there was increased concern over the apparent interference by politicians in court rulings. Public criticism by politicians of certain rulings and proposals as to how individual cases pending before a court should be decided created the impression that the independence of Finnish courts was being undermined.

In two cases the European Court of Human Rights (ECtHR) found Finland in violation of article 10 (freedom of expression) of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

Although conditions of detention were generally acceptable, there were a number of problems related to the deprivation of liberty. On its regular visit to Finland, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that it was still common for persons to be held on remand in police custody, often for lengthy periods.

Racism and discriminating attitudes experienced by immigrants remained a widespread problem in 2004. Roma were revealed as a group particularly affected by this in all areas of daily life. In addition, civil rights organizations expressed concern over the continued use of the “accelerated procedure” in the asylum procedure, which unfairly impacted *inter alia* on those with “manifestly ill-founded” claims and applications by aliens from “safe countries.”

Equality between men and women in employment was found to be lacking with pay adversely affected by gender and evidence of frequent sexual harassment of women in the workplace. While the government made moves to amend anti-trafficking legislation, trafficking of women and girls to and via Finland remained widespread.

¹ Based on a report from the Finnish Helsinki Committee to the IHF.

Shortcomings in the restraints on police powers to tap telephones or engage in technical surveillance were revealed by the deputy ombudsman in two cases in 2004, highlighting the lack of clarity in current legislation.

Freedom of Expression, Free Media and Information

In October and November, the Finnish Security Police (SUPO) was involved in a case concerning the closure of an Internet site that distributed news from The Chechen Kavkazcenter Internet site [*kavkazcenter.com*] two days after being opened by a service provider in Finland.² The site had earlier been disconnected from a server in Lithuania due to pressure from the Russian authorities. Following by the SUPO the provider claimed that he had been pressurized into closing down the service.³ Security policemen removed the server the following evening.⁴

Following a request for clarification by the chairman of the parliamentary Constitutional Committee the minister of interior explained that SUPO was engaged in “pre-emptive security work” since there was reason to suspect that “material that would incite people to commit crimes” might be published on the website.⁵ However, no such content was found nor did the police at any point take any initiative to have the service provider prosecuted. The Kavkazcenter web site was turned back on line on 13 November by an Internet service provider whose server was located in Sweden.⁶

The ECtHR found a violation of article 10 (freedom of expression) in two cases, *Karhuvaara and Iltalehti v. Finland* and *Selistö v. Finland*.⁷

- In *Karhuvaara and Iltalehti*, *Iltalehti* had published an article about a criminal trial against the husband of a member of parliament (MP). The husband received a six-month suspended prison sentence charged with drunken and disorderly behavior and assaulting a police officer. The MP sued the paper for libel and an infringement of her privacy and subsequently Mr. Karhuvaara, who was editor-in-chief of the newspaper, was convicted of infringement of privacy in particularly aggravating circumstances (within the meaning of section 15 of the Parliament Act). He was ordered to pay FIM 47,360 (approximately EUR 7,965) in fines. The defendants were also ordered to pay damages of FIM 175,000 (approximately EUR 29,400). The domestic court dismissed the defamation charges. The ECtHR observed, among other things, that there was neither evidence nor allegations of factual misrepresentation or bad faith on the part of the applicants, and that interference in the MP’s private life was limited. The court noted that drawing attention principally to the husband’s marital relationship with the MP was a matter of factual observation and was in itself not sufficient to justify the applicants’ conviction. The ECtHR further considered that the severe penalties, viewed against the background of limited interference in the private life of the MP disclosed a striking disproportion between the competing interests of protection of private life and freedom of expression.

² One of the SUPO directors explained that they had been in contact with the leadership of the Ministry of Interior and with the prime minister, but did not act on their orders. *Seura* 46/2004.

³ SUPO visited his office six times. *Seura* 46/2004.

⁴ *Helsingin Sanomat* international internet edition, 15 November 2004, *Seura* 45/2004.

⁵ Ministry of Interior, press release 15 November 2004, in *Helsingin Sanomat* international Internet edition, 15 November 2004.

⁶ *Dagens Nyheter*, 15 November 2004.

⁷ *Karhuvaara and Iltalehti v. Finland*, Application No. 53678/00, 16 November, *Selistö v. Finland*, Application No. 56767/00, 16 November 2004, www.echr.coe.int.

Section 15 of the Parliament Act, was invoked in the above-mentioned case, provides MPs with special protection in the discharge of their duties by, among other things, stipulating that various criminal offences perpetrated against them while the parliament is in session are to be regarded as being committed in particularly aggravating circumstances. This indirect protection afforded to parliamentarians is relevant both to the justification and the proportionality of the convictions. The ECtHR considered that the automatic and unqualified application of section 15 by the domestic courts effectively nullified competing interests guaranteed by article 10 of the ECHR.

- In *Selistö vs. Finland*, Ms. Selistö was convicted and fined for having defamed a surgeon by writing two articles alleging that a patient had died in Seinäjoki Central Hospital on 7 December 1992 as a result of the surgeon's alcohol consumption during the night preceding the operation. The patient's widower had filed a criminal complaint, but the county prosecutor had decided not to press charges on the grounds of lack of evidence. The domestic courts found that, although the surgeon had not been named, local people were able to identify him from the applicant's articles, which gave an overly provocative and one-sided version of events. Ms. Selistö was convicted of defamation and sentenced to daily income-based fines totalling FIM 4,150 (EUR 698), increased on appeal to EUR 3,419. She and the newspaper's editor-in-chief were also ordered to reimburse jointly the complainant's legal costs. The ECtHR first noted that to a large degree the reporting had been based on accurate and reliable facts and that the selective use of materials could not in itself be regarded as sufficient for the applicant's conviction. Moreover, at no point had the surgeon's name, age or gender been expressly communicated to the general public, and the surgeon was not deprived of a chance to defend himself. Nor had the ethics of good journalism been violated. Moreover, the ECtHR noted that the purpose of the applicant's articles had been to discuss matters of patient safety in general, which in many cases is done by highlighting individual cases. It did not find that the undoubted interest of the surgeon in protecting his professional reputation was sufficient to outweigh important matters of legitimate public concern.

Independence of the Judiciary and Right to a Fair Trial

A number of cases throughout the year indicated that Finland continued to face difficulties in meeting certain standards of a fair trial. In two such cases the ECtHR found violations of article 6(1) for excessive length of proceedings.⁸

The independence of Finnish courts was raised as a concern for the first time in 2004. This was a consequence of interference by some members of the Council of State and parliament – notably Minister of Justice Johannes Koskinen and First Deputy Speaker of Parliament Markku Koski – in the exercise of judicial powers by independent courts of law. The minister of justice had on several occasions between 2002 and the time of writing publicly criticized the judgments of Finnish courts. In addition, both the minister of justice and first deputy speaker of parliament made public statements proposing how a certain individual case pending before court (or a significant aspect of such a case) should be decided.

- In January 2004, the minister of justice criticized in media interviews an appeal court judgment (*Itä-Suomen hovioikeus*) in a case involving a sex offence, at a time when leave of appeal could be sought from the Supreme Court. He argued that the Supreme Court should grant leave of appeal, and clearly implied that he expected the court to overrule the appeal court ruling.⁹

⁸ *Kangasluoma v. Finland*, Application No. 48339/99, 20 January 2004, *Pitkanen v. Finland*, Application No. 30508/96, 9 March 2004.

⁹ *Uutispäivä Demari*, 20 January 2004 and *Kaleva*, 20 January 2004.

- In July, the minister of justice in a TV interview with the Finnish Broadcasting Company (YLE) criticized Supreme Court judgments in two murder cases.¹⁰ He was of the opinion that the sentences were too lenient.¹¹ Consequently, President of the Supreme Court, Leif Sévon, criticized the minister for intervening in the exercise of the judicial powers of independent courts.
- In October, the same minister publicly commented that the opinion of children must always be sought and listened to in custody disputes. He also maintained that these opinions should be taken into account by juries. However, Koskinen stressed that he did not wish to criticise the Supreme Court in the particular case under public scrutiny at that time. The website of the Ministry of Justice also issued a press release underscoring that the minister was not giving instructions concerning the exercise of justice in a particular case.¹² At the time of these incidents, the Supreme Court had reopened a high-profile case of returning two Finnish-American brothers to their father in the United States. Subsequently, it upheld its earlier decision to return the boys to their father.
- The First Deputy Speaker, Markku Koski, also gave several interviews and arranged a public debate about “the application of the Hague Convention against child abduction” at the time when the case was pending before the Supreme Court. Koski also underscored the need for the court to take children’s views into account. Following the judgment, he maintained that the Supreme Court had made a wrong decision.¹³ The minister of justice and, in particular, the first deputy speaker were heavily criticized by the president of the Supreme Court for interfering in judicial affairs and giving rise to misgivings as to the independence of the courts.¹⁴

While there was no evidence to indicate that these interventions *de facto* influenced the decision-making of the courts in concrete cases, the interventions by key politicians gave the public the impression of a lack of independence of the judiciary.

The UN Human Rights Committee in its review of Finland’s fifth periodic report outlined Finland’s commitments under the International Covenant on Civil and Political Rights (ICCPR).¹⁵ It noted with concern the overt attacks made by political authorities (members of the government and parliament) on the competence of the judiciary with a view to interfering in certain judicial decisions and recommended that Finland take action at the highest level to uphold the independence of the judiciary and maintain public trust in the independence of the courts (articles 2 and 14 of the ICCPR).¹⁶ The president of the Supreme Court welcomed the committee’s recommendations in an interview on the day they were made public.

¹⁰ KKO 2004:54 and KKO 2004:63, <http://www.finlex.fi/oikeus/index.html>.

¹¹ See e.g. YLE 24 (news by the Finnish Broadcasting Company), 13 July 2004. See also *Verkkouutiset*, <http://www.verkkouutiset.fi>.

¹² Ministry of Justice, “Johannes Koskinen ei kritisoinut korkeinta oikeutta,” press release and annex, 25 August 2004, <http://www.om.fi/27379.htm>.

¹³ For overview, see e.g. *Turun Sanomat*, 15 September 2004, <http://turunsanomat.fi/osasto/?ts=1.2.0.0.180972>.

¹⁴ *Hufvudstadsbladet*, 21 September 2004.

¹⁵ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee : Finland. 02/12/2004*. CCPR/C/FIN/2003/5 (Concluding Observations/Comments), 2 December 2004, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6d5bb984e19b576ec1256f6b0052fe35?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6d5bb984e19b576ec1256f6b0052fe35?Opendocument).

¹⁶ UN Human Rights Committee Concluding Observations at its 2239th meeting (CCPR/C/SR.2239), held on 27 October 2004.

Conditions in Prisons and Detention Facilities

Remand in Police Custody

Although conditions in detention were generally good, there remained a number of problems related to the deprivation of liberty. During its regular visit to Finland, the CPT found that it was still common for persons to be held on remand in police custody, often for lengthy periods. None of the detention facilities visited offered a suitable regime of activities for persons on remand, who spent almost all of their time locked in their cells. Despite recommendations made by the CPT in 1998, the provision of health care also remained inadequate.¹⁷

A special inquiry into deaths in police cells launched by the deputy ombudsman had also revealed serious deficiencies in the supervision of remand prisoners with those in custody often left completely alone in their cells.¹⁸

In its review of Finland's fifth periodic report, the UN Human Rights Committee expressed concern at the situation of persons held in pre-trial detention at police stations and noted the lack of clarity as regards detainees' rights to a lawyer while in custody and the involvement and role of a doctor during that period. The committee invited Finland to provide the necessary clarifications to assure that legislation and practice in this area are compatible with articles 7 (prohibition of torture and inhuman treatment or punishment) and 9 ICCPR (deprivation of the liberty).¹⁹

Reform Schools and Aliens in Police Establishments

In her special inspection of state reform schools, the parliamentary ombudsman found that the fundamental human rights of children placed in these schools were often restricted without legal justification. Decisions on deprivation of liberty and isolation of children during treatment were also not properly recorded.²⁰

With regard to foreign nationals detained under legislation relating to the treatment of aliens, the CPT delegation noted that, outside Helsinki, persons deprived of their liberty under such legislation continued to be held in police establishments. Such facilities were, in principle, considered unsuitable for holding persons.

Conscientious Objection

In its concluding observations the UN Human Rights Committee expressed concern that the right to conscientious objection was only acknowledged in peacetime, and that the civilian alternative to military service was disproportionately long. The committee also reiterated its concern at the fact that the preferential treatment accorded to Jehovah's Witnesses – who were relieved from the duty to serve either as conscripts or civil servicemen due to their religious conviction – had not been extended to other groups of conscientious objectors. It recommended that Finland fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime; it should also end the

¹⁷ CPT noted that several of its recommendations made in 1998 had not been implemented. See preliminary observations made by the delegation of the CPT, 21 October 2003, CPT/Inf (2003)38.

¹⁸ Deputy Ombudsman, press release, 22 December 2003, T 45/2003.

¹⁹ UN Human Rights Committee concluding observations at its 2239th meeting (CCPR/C/SR.2239), held on 27 October 2004.

²⁰ Decision by the Parliamentary Ombudsman, 10 January 2003, No. 3170/2/01.

discrimination inherent in the duration of alternative civilian service and the categories that can benefit from it (articles 18 and 26 of the ICCPR).²¹

Respect of Private and Family Life

Telephone Surveillance

Over the past decade, the measures available to the police to fight criminality have been greatly augmented. As a general rule, the police need to seek court approval to tap telephones or engage in technical surveillance. While these measures have been in use for some time, certain problems have arisen and shortcomings were revealed by the deputy ombudsman in two cases in 2004.²²

In one case the police had tapped the telephone calls of the wife of the suspect, despite the fact that the law allows only communications made by the suspect to be tapped. Several shortcomings in the legislation were also revealed, namely the regulation on redundant information about persons not under suspicion gathered in connection with telephone tapping and the regulations on the processing of tele-surveillance information. The lawyer's duty of secrecy to their clients was also found to be insufficiently guaranteed.

There was fear that an amendment to the law on coercive measures, which allows for the storage of all information gathered by means of tele-surveillance, would cause problems.²³ The deputy ombudsman was particularly critical of the newly introduced term "tele-coercive measures." There were, he maintained, insufficient supervisory mechanisms in place in relation to police surveillance.²⁴ In a recent study by the deputy chancellor of justice the insufficiency of the measures of supervision of the police were confirmed with a recommendation to install more independent and effective measures of supervision.²⁵

In 2004, preliminary investigations were conducted into the 2003 tapping of the mobile phone of the prime minister, which had been done without court authorisation.²⁶ The minister of interior denounced the tapping as an extremely serious breach of law.²⁷ The Council of State's head of security chief resigned after it became clear that he had ordered the tapping. The case was pending as of the end of the year.

The head of the SUPO was suspended from office on 7 September 2004 when it was revealed that SUPO had failed to take any action with regard to illicit tele-information surveillance by one of its local units. This was discovered in connection with a larger investigation concerning illicit collection of tele-information by Sonera, one of the largest tele-operators in Finland. A head of unit in SUPO was also suspended for the same reasons on 10 September 2004.²⁸ There were indications that such illegal practices of information retrieval were also being carried out by the Helsinki Police Department - the largest police

²¹ UN Human Rights Committee concluding observations at its 2239th meeting (CCPR/C/SR.2239), held on 27 October 2004.

²² Parliamentary Ombudsman, press release T 37/2003, 4 November 2003.

²³ Came into force in January 2004.

²⁴ The expert opinion of the Deputy Ombudsman to the Legal Committee of the Parliament on 11 June 2002 (HE 52/2002 vp).

²⁵ Jaakko Jonkka, "Poliisin johtamisjärjestelmä ja sisäinen laillisuusvalvonta", Helsinki, 17 November 2004, Sisäasiainministeriön julkaisu 48/2004.

²⁶ *Ilta-Sanomat* 29 October 2003.

²⁷ Ministry of Interior press release, 29 October 2003.

²⁸ Ministry of Interior press release, 7 September 2004 and *Helsingin Sanomat*, 10 September 2004.

unit in Finland.²⁹ Criminal investigations were carried out and court proceedings ongoing with regard to all these cases at the time of writing.

Equal Rights of Women and Men

In 2004 the third gender barometer was published. According to the barometer, one female employee in four still felt that their pay was adversely affected by their gender.³⁰ This was supported by statistics: although women had a higher level of education than men, their average salary was 20% lower than that of men.³¹ The barometer also showed that sexual harassment of women was common. One in every two young women had been harassed during the past two years.³²

The Act on Equality between Men and Women of 1987 contains provisions for equality with respect to remuneration and working conditions. Since 1995 the act also sets out that an employer employing at least 30 persons has to include measures for equality promotion in its annual planning. There are no sanctions, however, for lack of compliance. The impact of the provision on the *de facto* situation has been minimal and equality planning appears to be used only by the minority of employers.³³ The act was under revision as of the end of 2004.

Violence against Women

Domestic violence against women remained a widespread problem and received much public attention during the year. According to human rights monitoring bodies,³⁴ every fifth woman experienced or was threatened with such violence by members of their close family.³⁵ Moreover, violence experienced in the workplace was widespread and on the increase. Almost 60,000 women working in the health sector were victims of violence in 2003.³⁶

The Finnish Section of Amnesty International, together with national human rights and women's organizations, criticized the fact that support to victims of violence was fragmented and to a large extent concentrated in the hands of the third sector. The organizations recommended, *inter alia*, the government to establish a coherent network of services for victims, witnesses and perpetrators covering the whole country and a reform of current legislation to define what categories of crimes could be subject to mediation. The so-called mediation procedure (*sovittelu*) was frequently used in domestic violence cases

²⁹ STT (Finnish News Bureau) 25 November 2004.

³⁰ Tasa-arvobarometri 2004.

³¹ The average salary in 2003 was EUR 2,581 for men and EUR 2,065 for women. See Statistics Finland available at www.stat.fi. See also *Sanomat*, "Naiset ovat miehiä koulutetumpia jo koko alle 60-vuotiaassa väestössä," 21 March 2004.

³² Tasa-arvobarometri 2004.

³³ Karoliina Ahtela, "Promoting Equality in the Workplace: Legislative Intent and Reality," in *Nordic Equality at a Crossroads*, Svensson, Pykkänen and Niemi-Kiesiläinen (eds.), (Aldershot: Ashgate, 2004), pp. 69-89, pp. 72-74.

³⁴ E.g. the UN Committee on the Elimination of Discrimination against Women (CEDAW) has recommended Finland to pay more attention to prevention efforts in the fight against violence against women. See Concluding Observations on Finland adopted on 2 February 2001, para 302. The Committee on Economic, Social and Cultural Rights noted in 2000 "that the phenomenon [violence against women] has reached alarming proportions." See Concluding Observations on Finland, adopted on 24 November 2000, para. 17.

³⁵ Markku Heiskanen and Minna Piispa, *Usko, toivo ja harkkaus. Kyselytutkimus miesten naisille tekemästä väkivallasta*, Tasa-arvoneuvottelukunta & Tilastokeskus, 1998.

³⁶ Markku Heiskanen, Reino Sirén and Kauko Aromaa, *Suomalaisten turvallisuus 2003*, (Helsinki 2004), p. 18, <http://www.om.fi/optula/uploads/paluf0gyx.pdf>; press release, 11 March 2004, <http://www.om.fi/optula/uploads/qqzu7j1ees5f.pdf>.

often ending the legal procedure with no charges being made. Council of Europe Committee of Ministers recommendations argue that mediation should only be used when there is respect between the two parties and where there exists a safe environment.³⁷ Cases of sexual violence, abuse and domestic violence were thus not appropriately dealt with by this kind of procedure.³⁸ The National Research and Development Centre for Welfare and Health (Stakes) on the other hand was of the opinion that mediation was not used often enough in domestic violence cases.³⁹

The provision under which it was possible to drop charges against a person alleged of physical abuse if the victim expressed her firm will against criminal proceedings (“*vakaa tahto pykälä*”) was removed in July. Civil rights organizations have recommended that the provision also be removed from the legislation covering rape to ensure that rape and physical abuse are treated as crimes with associated consequences.⁴⁰

Racism, Intolerance and Xenophobia

According to a recent report on racism in Finland, difficulties in creating reliable methods for measuring racism made it difficult to assess whether racist attitudes were on the increase or not.⁴¹ However, there was evidence that racism, in particular discriminating attitudes experienced by immigrants in everyday life continued to be a widespread problem in 2004.⁴²

In its concluding observations, the UN Human Rights Committee mentioned in particular the situation of Roma, noting with concern that the group continued to face discrimination in housing, education, employment and access to public places.⁴³

An experiment carried out by the Finnish League for Human Rights in 2002 also showed the extent of discrimination experienced in access to public places. Four different groups consisting of representatives of Roma, immigrants of African descent as well as at least one member of the majority population, tested whether restaurants in Helsinki prohibited entrance on the basis of ethnicity. The results, published in early 2005, showed that at least one member of each group experienced discrimination when trying to enter one or more restaurants. In six out of eleven cases the doorman or the restaurant manager were fined; in four cases there were no charges. Compensation received by the victims was minimal.⁴⁴

³⁷ Council of Europe Committee of Ministers Recommendation No. R (99) 19, 15 September 1999.

³⁸ Amnesty International Finnish Section, Recommendations to the Government on the Prevention of Violence against Women, 9 November 2004.

³⁹ Stakes, “Stakesin tutkimus sovittelukäytännön soveltuvuudesta perheväkivaltatapauksiin: Perheväkivaltasovittelua käytetään aivan liian harvoin,” press release 21 October 2004.

⁴⁰ Amnesty International Finnish Sectionin, Recommendations to the Government on the Prevention of Violence against Women, 9 November 2004.

⁴¹ Joonia Streng, *Rasismi Suomessa 2003: Vuosikatsaus*, [Racism in Finland 2003], Finnish League for Human Rights, 2004, p. 62.

⁴² Several studies show that racism is a serious problem for many immigrants. See e.g. Inga Jasinskaja-Lahti, Karmela Liebkind and Tiina Vesala, *Rasismi ja syrjintä Suomessa: Maahanmuuttajien kokemuksia*, (Helsinki: Gaudeamus, 2002), pp. 30-35. According to one study, it is estimated that every third immigrant has experienced racism. See *Helsingin Sanomat*, ”Joka kolmannen maahanmuuttajan arvioidaan kokevan rasismia vuosittain,” 22 March 2004.

⁴³ UN Human Rights Committee, *Concluding observations of the Human Rights Committee : Finland. 02/12/2004*. CCPR/C/FIN/2003/5 (Concluding Observations/Comments), para. 15, 2 December 2004, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6d5bb984e19b576ec1256f6b0052fe35?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6d5bb984e19b576ec1256f6b0052fe35?OpenDocument).

⁴⁴ Finnish League for Human Rights, ”Ravintolasyrjintä vakiintunutta, viranomaisten suhtautuminen piittaamatonta”, press release, 4 January 2004, <http://www.ihmisoikeusliitto.fi/tiedostot/tiedote41205.doc>.

Finnish legislation prohibiting discrimination is advanced: section 6 of the Constitution of Finland⁴⁵ is both non-exhaustive as to prohibited grounds of discrimination and independent, meaning that it is applicable in all areas of social life. It is also positive that “origin” is used instead of “race” in the list of prohibited grounds of discrimination.⁴⁶

In February 2004, the new Equality Act came into force. Although alleged to be complicated and incoherent, a positive aspect⁴⁷ is that it includes, *inter alia*, definitions of direct and indirect discrimination and creates a new independent body, the Board against Discrimination (*syrjintälautakunta*). The board was established in February 2004 and has as its primary task to promote ethnic equality. Individuals who have experienced discrimination on the basis of ethnicity can address the board e.g. when discrimination is experienced in applying for social security benefits or municipal rental apartments. The remedy offered to victims of discrimination is compensation (maximum EUR 15,000).⁴⁸ The decisions of the board can be petitioned to administrative court.

Actual enforcement of legislation, however, continued to be problematic. Despite guidelines issued by the prosecutor general urging for effective prosecution measures with regard to racist crimes, it was not uncommon in 2004 that these were neither investigated nor prosecuted effectively. During the year a case concerning a publication of race theories gained widespread publicity.

- In August, the theories of a retired professor were published by the largest Finnish daily newspaper *Helsingin Sanomat*. These theories, which indicated that the intelligence level of people depended on the color of their skin, the black being less intelligent than white fell clearly within the domain of such racial theories the dissemination of which is prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination. After a one-day investigation the police authorities considered that there was no reason for further measures. A decision of non-prosecution by the deputy prosecutor general followed a couple of weeks later.

Asylum Seekers

The Finnish human rights community, and a number of international monitoring bodies,⁴⁹ continued to be very critical of the tightening up of the asylum procedure through the introduction of the so-called “accelerated procedure” into the Aliens Act in July 2000. Despite the criticism, the accelerated procedure remained in the revised Aliens Act of 30 April 2004.⁵⁰ The provision means that asylum seekers with “manifestly ill-founded” claims and applications by aliens from a “safe country” can be immediately rejected. The UN Human Rights Committee also noted “the lack of clarity as to the implications and consequences of the provision as regards both the suspensive effect of an appeal and the legal protection

⁴⁵ Act No. 731 of 1999.

⁴⁶ Martin Scheinin, “Constitutional Coexistence: Minority Rights and Non-Discrimination under the New Finnish Constitution of 2000,” in *Rethinking Non-Discrimination and Minority Rights*, Martin Scheinin and Reetta Toivanen (eds.), (Turku/Åbo: Institute for Human Rights, 2004).

⁴⁷ Act No. 21 of 2004.

⁴⁸ See e.g. *Valtioneuvoston selonteko Suomen ihmisoikeuspolitiikasta* [Finland’s human rights policy: Report by the Government], 2004, pp. 106-107.

⁴⁹ See ECRI, *Second report on Finland, CRI (2002) 20; Committee on the Elimination of Racial Discrimination, Concluding observations on Finland*, adopted on 22 August 2003; *Opinion of the Commissioner for Human Rights of the Council of Europe*, Mr Alvaro Gil-Robles, CommDH(2003)13, 17 October 2003.

⁵⁰ Act No. 301/2004.

available to asylum seekers.”⁵¹ Considering that out of 3,418 negative decisions made in 2004, 2,687 were made under the accelerated procedure, it is clear that this was a serious question affecting the majority of all asylum seekers coming to Finland.⁵²

In a joint statement, a number of Finnish NGOs underscored that the legal protection of asylum seekers was severely compromised as they could be removed from the country before the time limit for appeal was exhausted. Furthermore, the NGOs were concerned with the fact that it was possible to take minors into custody.⁵³

Under the Aliens Act, aliens can be detained in cases where there is a risk that they might hide from the authorities or otherwise obstruct the asylum procedure, their identity is unclear or they are suspected of a crime in Finland.⁵⁴ Although special custody units for aliens have been established, in some circumstances, e.g. when these facilities were full, asylum seekers were placed in regular police custody.⁵⁵

The minority ombudsman expressed grave concern that an exceptionally high number (153 in 2002) of asylum seekers continued to be taken into custody by the police in the city of Tampere. The response from the police did not answer the question on what grounds these decisions were made. The conclusion was that the police had repeatedly made mistakes and that the practice of taking aliens into custody was not in line with legislation. Furthermore, there were open questions concerning lengthy stays in police custody and allegations of misconduct by the police.⁵⁶

The minority ombudsman also took up a case in which an application for residence permit was rejected on the basis that the security police had information about the person that could be relevant for national security. The court of appeal neither overturned the negative decision nor reviewed the security police’s justifications.⁵⁷ Finland has no legislation on the balancing of national security and basic rights of individuals in situations as that described above.⁵⁸

Trafficking in Human Beings

⁵¹ UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Finland*, 02/12/2004, CCPR/C/FIN/2003/5 (Concluding Observations/Comments), para 12, 2 December 2004, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6d5bb984e19b576ec1256f6b0052fe35?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6d5bb984e19b576ec1256f6b0052fe35?Opendocument).

⁵² Figures from the Directorate of Immigration.

⁵³ Järjestöjen kannanotto uudeksi ulkomaalaislaiksi, 22 January 2004. Available at <http://www.pakolaisneuvonta.fi/?cid=66&lang=suo>.

⁵⁴ Act No. 301/2004, 121-124 §.

⁵⁵ *Helsingin Sanomat*, ”Turvapaikanhakijoita joutuu yhä poliisivankiloihin,” 18 February 2004. The minority ombudsman has expressed concern at this practice.

⁵⁶ Minority Ombudsman, statement of 31 May 2004. See also *Helsingin Sanomat*, ”Tampereen poliisin turvapaikatutkinta sai moitteita,” 1 June 2004.

⁵⁷ The ECtHR has in the case of *Al-Nashif v. Bulgaria* stated that ”the guarantee of an effective remedy requires as a minimum that the (...) appeals authority must be informed of the reasons grounding the deportation decision, even if such reasons are not publicly available.” *Al-Nashif v. Bulgaria*, Application No. 50963/99, Judgment of 20 September 2002, para. 137.

⁵⁸ See written question by Member of Parliament Heidi Hautala ”Yksilön oikeuksien turvaaminen kun maasta poistamisen perusteena valtion turvallisuus,” 22 December 2004.

In its fourth annual Trafficking in Persons Report published in June 2004⁵⁹, the US State Department argued that Finland was a destination and transit country for women and girls trafficked by organized crime syndicates into sexual exploitation. Finland was criticized as the only EU member state together with Greece that had not taken necessary measures, including legislative measures, to combat trafficking in human beings and, consequently, was placed in Tier 2.⁶⁰ The common understanding of the authorities, however, was that all foreign prostitutes had consented to work as prostitutes and were fully aware of the nature of the work.⁶¹ Trafficking in human beings was not considered a problem in Finland.

In November 2002, the Ministry of Justice appointed a working group to prepare a draft for criminal law provisions prohibiting trafficking in human beings and for certain related amendments to the Penal Code. In its report,⁶² the working group concluded that Finnish legislation did not fully cover the country's obligations under international instruments to criminalize trafficking in human beings.⁶³

At the beginning of August 2004, new provisions on trafficking in human beings were incorporated into the Penal Code.⁶⁴ In accordance with the new provisions, a person who, for example, through deception or through the abuse of another's dependent position delivers or transports him/her for the purposes of sexual exploitation, forced labour, or for the removal of body organs for commercial gain shall be convicted of trafficking in persons with imprisonment from four months to six years. An offender may be convicted of aggravated trafficking in human beings if violence or threats are employed in the trafficking in human beings or if there is also organized crime. The penalty scale runs from two to ten years of imprisonment. No cases under the amendments had been taken to court by February 2005.

In Finland, trafficking was primarily connected to organized prostitution. There were indications that in some cases prostitutes were kept locked up, their passports or other identity documents taken and they were threatened with violence or debt-bondage. In addition, the trafficked women were deceived about the nature of the work waiting for them in Finland.⁶⁵

⁵⁹ Apart from the US State Department, the Committee on the Elimination of Discrimination against Women, for example, has in its twenty-fourth session (15 January – 2 February 2001) expressed concern at the increased incidence of trafficking in women and exploitation of prostitution of women in Finland. Report of the Committee on the Elimination of Discrimination against Women, A/56/38.

⁶⁰ Victims of Trafficking and Violence Protection Act of 2000; U.S. Department of State, *Trafficking in Persons Report*, 2004. Tier 2 is reserved for countries whose governments do not fully comply with the act's minimum standards but are making significant efforts to comply with those standards. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7101 et seq.) (TVPA), recently amended by the Trafficking Victims Protection Reauthorization Act of 2003 (Public Law 108-193).

⁶¹ Jari Leskinen, *Rikostutkimus 2002. Organisoitu paritus ja prostituutio Suomessa*, the National Bureau of Investigation, 2002.

⁶² "Ihmiskauppa, paritus ja prostituutio," työryhmän osamietintö, 2003:5. The working group also proposed that the purchase of sexual services should be established as a criminal offence but the government considered that this question should be postponed until 2005. The Public Order Act, which came into force in 2003, criminalizes the buying and selling of sexual services in public places.

⁶³ These instruments include the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, the Child Prostitution and Child Pornography, and the European Union Council Framework Decision on Combating Trafficking in Human Beings. Ratification process of the Palermo Protocol was not completed by the end of 2004.

⁶⁴ Law amendments are based on government proposal no. 34/2004.

⁶⁵ See for example Martti Lehti and Kauko Aromaa, *Naiskauppa, laitton siirtolaisuus ja Suomi*. Oikeuspoliittinen tutkimuslaitos, 2002; and Seppo Sillanpää, *Prostituutiotilanne pääkaupunkiseudulla 2003*, http://www.yle.fi/poliisitiv/kolumni_vko38.php.

Trafficking for the purpose of labor exploitation was still relatively scarce. There were, however, an increasing number of cases of labor abuse particularly in the field of construction work, which could be connected to trafficking in human beings.

In August 2004, an inter-ministerial working group was established to prepare a national plan of action against trafficking in human beings. The aim of the working group is to examine, on the basis of new anti-trafficking legislation, existing and required measures to better and more efficiently prevent trafficking and re-trafficking, combat organized crime, protect and assist victims as well as prosecute traffickers.

Identifying victims remained one the main challenges, with the large majority of victims of trafficking being treated as prostitutes⁶⁶ or migrant workers and thus foregoing protection. Civil rights organizations argued that without proper identification and a common understanding of the phenomenon, Finland will not be able to make crucial steps to protect and assist victims and prosecute traffickers. Trafficking could also be reduced by addressing the demand side and the responsibility of users and other beneficiaries, such as clients and employers.

⁶⁶ United Sex Professionals of Finland (Salli) made a complaint to the parliamentary ombudsman that police, border guards and customs officials during raids in various nightclubs in Helsinki expelled possible victims of trafficking. !Kantelu eduskunnan oikeusasiamiehelle. Mahdollisiin ihmiskaupan uhreihin kohdistunut ratsia,” 24-25 September 2004, <http://www.salli.org/kantelut/e0501.pdf>.